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COMMITTEE ON THE RIGHTS OF THE CHILD

Sixteenth session

SUMMARY RECORD OF THE 404th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 25 September 1997, at 10 a.m.

Chairperson: Miss MASON

CONTENTS

CONSIDERATION OF REPORTS OF STATES PARTIES (continued)

Initial report of Australia (continued)

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The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS OF STATES PARTIES (agenda item 4) (continued)

Initial report of Australia (CRC/C/8/Add.31 (English only); core document (HRI/CORE/1/Add.44); list of issues (CRC/C/Q/AUS/1); written response by the Australian Government to the questions raised in the list of issues (document without symbol, distributed at the meeting))

1. At the invitation of the Chairperson, the Australian delegation resumed their places at the Committee table.

2. The CHAIRPERSON requested the delegation to continue its replies to the questions raised at the previous meeting.

3. Mr. MOSS (Australia) said that for obvious reasons his delegation could not include representatives of all of Australia's States and territories. Ms. Calvert, who had been appointed by the States and territories to represent them, was from New South Wales. She thus often relied on the example of that State in her replies, but her comments were generally valid for the other States and territories as well. It was easy to understand that it would have been impossible in the report to cover the situation in each State and territory.

4. Ms. FROST (Australia) said that the report did not give a detailed description of the situation in the populated external territories because they were subject to the laws of the Commonwealth and had few inhabitants. Those territories included Norfolk Island, which had some autonomy, the Cocos (Keeling) Islands and Christmas Island.

5. Mr. MOSS (Australia), responding to questions concerning age-limits, said that the legal age for marriage was 18 years for both sexes, although in exceptional circumstances the limit could be waived if a future spouse was at least 16 years of age.

6. Ms. SHEEDY (Australia) said that the minimum age for employment was 15 years. In some fields of activity, such as mines, bars, factories and shipping, special provisions applied. The authorities encouraged apprenticeship and considered that work carried out by young people during their studies was a positive experience, provided they were not exploited. The Australian Government did not intend to ratify ILO Convention No. 138. However, it was participating actively in the ILO's effort to draw up a new instrument on extreme forms of child labour.

7. The age of criminal responsibility varied from one State or territory to another. Under federal law, a child under 10 years of age could not be held criminally responsible. Between the ages of 10 and 14, the child could be found to have some criminal responsibility, to an extent defined by his or her consciousness of the act committed; the Attorney-General determined the degree of responsibility which could be attributed to the child. In Tasmania and some of the external territories, the age of criminal responsibility was 7 or 8 years, but the Federal Government had requested that it be raised to 10 years.

8. Mr. RABAH asked what the voting age was in Australia, at what age a minor could become party to a contract, whether minors were subject to capital punishment or life imprisonment, and at what age a person could legally consent to sexual intercourse, testify before a court, give his or her opinion in the event of adoption and in general represent his or her own interests.

9. Mr. MOSS (Australia) said that the voting age and the age of eligibility to stand for election was 18 years. Minors were not subject to capital punishment, as there was no death penalty in Australia. Information on the minimum age of consent for sexual intercourse could be found in paragraphs 133 to 136 of the initial report (CRC/C/8/Add.31), and paragraphs 137 to 149 indicated the minimum age for giving evidence in court. His delegation was regrettably unable to provide replies on the minimum ages applicable in other fields.

10. Mrs. KARP asked whether the Australian delegation was aware of any studies conducted in the country on the effects of corporal punishment. In her opinion corporal punishment was not only a form of physical violence, but could also have long-term psychological consequences on children. She recalled that the Convention condemned in no uncertain terms all forms of physical or mental violence, injury or abuse demeaning the human dignity of the child, and that as far as civil rights and liberties were concerned, the child was entitled to the protection of his or her physical integrity, privacy and personality. She understood that the Attorney-General of Australia had interpreted the provisions of article 28, paragraph 2, of the Convention as excluding "reasonable chastisement". The Committee's position was that any punishment or physical chastisement, however sparingly inflicted, would be prejudicial to the child's dignity and would contravene the Convention, particularly articles 3 and 19, article 20, paragraph 2, article 37 (a) and (c), and articles 39 and 40.

11. The CHAIRPERSON said it was her understanding that the opinion polls which indicated that a certain percentage of the population was in favour of corporal punishment relied solely on consultation of adults. She would like to know whether any studies devoted to corporal punishment within the family had been carried out among children.

12. Mrs. OUEDRAOGO concurred with the comments made by Mrs. Karp. She believed that the federal authorities should abolish the practice of corporal punishment and conduct an awareness campaign to demonstrate that children could and should be brought up without physical or psychological violence. Law-enforcement officials dealing with minors should be made especially aware of the problems stemming from violence. She would also like to know more about existing procedures to deal with child abuse in families and about what steps were taken in the event of rape or incest. How were children psychologically and socially reintegrated when traumatized by sexual abuse? Were there social counsellors to assist them?

13. As for the question of non-discrimination, she requested clarification regarding the exemptions and exceptions provided respectively by the Anti-Discrimination Act (1991) of Queensland, and the Equal Opportunity Act (1984) of South Australia (paragraphs 186 to 189 of the initial report). Were those provisions not a kind of institutionalized injustice? She also

asked for further information on the situation of Aboriginal and Torres Strait Islander children. Had the report been submitted to the Attorney-General as planned, and had any specific steps been taken? In what language were the Aboriginal and Torres Strait Islander children educated? What was the situation of women, and in particular women in isolated rural areas, with regard to discrimination? She also asked whether it would not be advisable to repeal the Human Rights and Equal Opportunity Commission Act (1986), which did not make it unlawful to discriminate on grounds of age (paragraph 178 of the report). Lastly, as the Australian authorities had apparently done much work for the disabled, she would like to know how disabled children were integrated into society in concrete terms.

14. Mrs. PALME pointed out that to preserve the dignity of children it was extremely important to bring about a change of attitudes and to modify the legislation on corporal punishment. She would like to find out more about the criteria used in Australia to decide that a 10-year-old child could be held criminally responsible but did not yet have the discretionary judgement required to file a complaint in the event of discrimination. She also asked what support was provided for minors in trouble with the law.

15. Mr. RABAH said that the provisions of the Australian Citizenship Act, which allowed for the possible loss of Australian citizenship by a child under 18 owing to the situation of his or her parents, did not appear to be easily reconcilable with the requirements of the Convention regarding the best interests and dignity of the child. He specifically requested clarification as to what was meant by "a child in a particular case" in the Act's provision concerning the deprivation of Australian citizenship.

16. The CHAIRPERSON asked whether federal law applied in States which had not adopted appropriate anti-discrimination legislation or provisions, as would appear to be the case with Tasmania. She would like to know whether Aboriginal people and Torres Strait Islanders held higher positions in Australian society following the adoption of legislation to assist them in the 1970s, and in particular whether there were any parliamentarians from those groups. As part of the assimilation policy, recommendations had been issued for financial compensation, national acknowledgement, the cessation of discrimination, and the funding of various services. She asked whether those recommendations had been implemented, and if not, for what reason. She would also like to know about Australian society's attitude towards children born out of wedlock, who represented 25 per cent of all births, and whether teenage pregnancies were common. Lastly, she wondered whether the extra-legal measures and procedures employed by the police to prevent youths from congregating in certain public places violated the civil rights of those minors.

17. Mrs. KARP asked what impact the 40 per cent cutback in the budget of the Human Rights and Equal Opportunity Commission was likely to have on the status of Aboriginals. She would also like to know to what extent the recommendations concerning national streamlining of provisions relating to protection, placement, adoption and justice for Aboriginal minors were applied in practice. What measures were under consideration to reduce the proportion of Aboriginals and Torres Strait Islanders in the prison population?

18. Mr. KOLOSOV noted that Australia had submitted a very comprehensive report, but that the statistics in the appendices dated from 1990 to 1992, and thus related to a period prior to the Government's introduction of new legal provisions concerning the status of Aboriginals, and also prior to studies on their actual situation. There was consequently no way to determine whether those various measures had had any effect or whether they were likely to assist in the attainment of the Convention's objectives. The Australian Government could perhaps send the Committee more recent data with which to assess the situation, as soon as they became available.

The meeting was suspended at 11.05 a.m. and resumed at 11.30 a.m.

19. Mr. MOSS (Australia) said that the Australian Government did not share the Committee's opinion that all corporal punishment was contrary to the provisions of the Convention. Indeed, an analysis of the preparatory work carried out prior to the drafting of the Convention would indicate that the use of moderate and reasonable corporal punishment in the event of breaches of discipline was not contrary to article 28 of the Convention. As for article 19 of the Convention, its aim was to protect children against all forms of physical or mental violence, injury or abuse; it mentioned neither punishment nor discipline. If the drafters of the Convention had intended to forbid all forms of corporal punishment, they would have expressly said so in that article. The use of corporal punishment by parents or by persons and institutions responsible for children was, moreover, delimited in article 37 of the Convention, which prohibited torture and cruel, inhuman or degrading treatment or punishment.

20. Ms. CALVERT (Australia) said that no research had been carried out in Australia to determine the number of cases of corporal punishment that had degenerated into physical ill-treatment. Such ill-treatment accounted, however, for 25 per cent of reported cases of child abuse, and parents often tried to justify such acts by stating that they had hit their child as a disciplinary measure. It should be noted that corporal punishment was forbidden in all children's services. In addition, in May 1995 the National Job Protection Council had published a paper on the legal and social aspects of physical punishment of children, which had concluded that while corporal punishment could be physically and emotionally damaging, especially if the punishment was severe and without explanation, there was noting to indicate that occasional and sparing use of it could be emotionally prejudicial. Furthermore, independently of the legal situation, a number of non-governmental and governmental bodies advised families on ways to enforce discipline without harming the child's integrity and dignity. The National Association for the Prevention of Child Abuse and Neglect had recently published a brochure entitled "101 Alternatives to Smacking Your Children", which was distributed widely and free of charge throughout Australia.

21. Each State and territory had adopted legislation for child protection, as well as penal legislation defining incest, rape and assault against children as offences. Those legal instruments were aimed at allowing the authorities to intervene in families where children were at risk or were being ill-treated. The various protection and advisory services in each State were described in detail in the initial report and the core document. They consisted in either individual therapeutic services for children, or family or

parental counselling services, particularly dealing with cases where the parents had a drug or alcohol problem. In the event of actual child abuse, support services were also provided; they offered financial support, housing, and support for children removed from the custody of the parents. For cases of incest, some States had adopted a specific programme combining legal and therapeutic approaches, and various types of research were under way. An effort was being made to train the various staff concerned in methods of dealing with families where there was ill-treatment and in ways of identifying cases of child abuse. For example, in New South Wales all teachers received instruction on how to determine whether children were victims of child abuse and how to report such cases to the appropriate body. Lastly, the States had recently begun discussing the possibility of aligning their legislation for the protection of children so that, when a family moved, protection measures previously taken in one State would continue to be applied in another.

22. Ms. SHEEDY (Australia) pointed out that all anti-discrimination legislation at both the State and the federal level included some exemptions and exceptions. Some were negative, others were positive; for example, they could be aimed at supporting a specific racial group, or women. Furthermore, the Standing Committee of Attornies-General had established a working group on human rights which was currently carrying out research with a view to standardizing the definitions and exemptions in all anti-discrimination legislation in force in Australia, and it was examining the best practices for dealing with complaints. Obviously, such a study would take some time, but the number of exemptions had already been reduced, especially in the Commonwealth legislation.

23. Replying to the questions about multiculturalism in Australia, Ms. CALVERT (Australia) said that the Human Rights and Equal Opportunity Commission was committed to promoting a better understanding of cultural diversity among the population at both the federal and the State levels. As an example, she referred to a programme implemented in New South Wales aimed primarily at combating racism in schools. Anti-racism contact officers had been assigned the task of registering complaints, which could be lodged by either students or parents. Another project drawn up for unemployed non-English-speaking youths had had some success in helping to place them in jobs. In addition, the Federal Government had earmarked $A 10 million for a campaign against racism to be conducted in the coming years.

24. Ms. SHEEDY (Australia) said that age discrimination related only to employment. Complaints could be filed at the workplace, pursuant to the International Labour Organization's Discrimination (Employment and Occupation) Convention, 1958 (No. 111). New South Wales, South Australia, the Australian Capital Territory and the Northern Territory had also adopted legislation on the subject.

25. With regard to the loss of citizenship by children, she referred the Committee members to the reply to question 14 on pages 30 and 31 of the Government's written response to the list of issues raised. As for the question of legislation against discrimination in Tasmania, she pointed out that Commonwealth legislation was indeed applicable in Tasmania, as long as

the State had not adopted its own laws, and that the Human Rights and Equal Opportunity Commission was empowered to deal with complaints of discrimination.

26. On the subject of the high proportion of Aboriginals and Torres Strait Islanders in the prison population, she said that in July 1997 the Minister for Aboriginal and Torres Strait Islander Affairs and the Federal Attorney-General had held a ministerial summit in Canberra to draw up a coordinated approach with a view to attacking the root causes of the problem. Various initiatives had been proposed to reduce the incarceration rate of Aboriginal children and the number of Aboriginal deaths in custody.

27. As for the question of access to secondary education for Aboriginal and Torres Strait Islander children living in isolated areas, Ms. STANFORD (Australia) said that the Federal Government, which was concerned to ensure equal access to education for all children, had allocated $A 50.8 million for programmes to assist schools in isolated areas of the country. Those programmes placed emphasis upon the teaching of English as a second language. Advisory services were also set up to prevent ill-treatment and other abuse to which non-English-speaking and disabled children were subjected. Furthermore, since 1983 supplementary services programmes had provided access to education for children with special needs.

28. Ms. CALVERT (Australia) added that a national census was taken every five years and that the Australian Bureau of Statistics and the Australian Institute of Family Studies were working together to compile indicators of the situation of children. The report on that subject would be sent to the Committee as soon as it was completed.

29. Ms. SHEEDY (Australia) said that agreements had been concluded between most of the States and territories and the Aboriginal Community Health Control Organization to streamline financing for health programmes, improve targeting of objectives and fill gaps wherever possible.

30. Mr. MOSS (Australia), replying to the questions concerning women, invited the Committee members to refer to the comprehensive report that Australia had recently prepared for the Committee on the Elimination of Discrimination against Women. That document reviewed all the programmes in isolated areas of the country. The age of criminal responsibility would be set at 10 years in a future uniform criminal code for the Commonwealth and the States. In the Australian legal system all children accused of an offence had the right to legal representation and to legal aid if they were unable to pay for a lawyer. Furthermore, one non-governmental organization, the National Children's and Youth Law Centre, the Australian Law Reform Commission and the Human Rights and Equal Opportunity Commission were jointly examining all legal issues pertaining to children. Their work should eventually produce a series of recommendations on the general situation of children in Australia. He recognized that Aboriginals and Torres Strait Islanders were under-represented in Australian society. That situation dated back to 1967, when a referendum had not allowed the Federal Government to promulgate legislation in favour of Aboriginals. However, the Human Rights and Equal Opportunity Commission had already begun efforts to remedy the situation.

31. Regarding the separation of Aboriginal children from their families, he said that the matter was being studied at the State level, and he would keep the Committee informed of recommendations adopted on the subject. Lastly, as to the status of children born out of wedlock, he referred the members of the Committee to paragraph 199 of the initial report, and confirmed that such children had the same rights as legitimate children, except in New South Wales.

32. Ms. CALVERT (Australia) said that the proportion of children born to teenage mothers had been 11 per cent in 1971 but only 6 per cent in 1991. On the other hand, there was an increasing number of young, unmarried mothers.

33. Turning to the question of whether the authorities were violating the right of assembly, she assumed that the Committee members' concern centred around the provisions of the New South Wales Act on parental responsibility, which specified that children left unsupervised in public places would be accompanied by the police either to their homes or to a holding centre. That text, adopted in 1994, was widely supported in rural communities, but had also led to a wave of protest from various bodies on philosophical as well as practical grounds. For that reason the New South Wales legislature had in 1997 adopted a new Act on child protection and parental responsibility which repealed the previous law. The new Act placed emphasis on the promotion of local crime prevention initiatives. There were still possibilities for accompanying unsupervised children, but they were much better defined. For example, such measures were applicable only in certain areas and with the consent of the Attorney-General. The methods of application had been defined in close cooperation with the local, and especially indigenous, communities so as to ensure the safety of children while taking into consideration their best interests, and a reference group had been established to assess the effects of the Act.

34. Mr. MOSS (Australia) said that the budget of the Human Rights and Equal Opportunity Commission would be reduced not by 40 per cent, as previously stated, but by 27 per cent. The Government had decided on the cutback as it considered that the Commission should do its share in the national effort to curb public spending. The reduction should, however, be seen in context: the Commission's resources had increased by 400 per cent over the past 10 years. Consequently, the measure, which was aimed at improving efficiency through a purely administrative reorganization, would not have any impact on the Commission's functions and activities.

35. The CHAIRPERSON invited the Committee members to address the subject of the family environment and alternative care (paragraphs 19 to 25 in the list of issues).

36. Mr. KOLOSOV welcomed the precise census data given in the report, but suggested that the Government should draw on more varied sources of information in its next report and present the most recent statistics possible, as the next census would take place only in five years' time.

37. Mrs. PALME asked whether those responsible for the current survey on the age of criminal responsibility had training in the psychological and physiological aspects of child development.

38. Mrs. OUEDRAOGO, turning again to the topic of anti-discrimination measures, asked whether the specific examples given by the Australian delegation were representative of the situation in all States. If so, she feared that there was a contradiction: awareness programmes were being adopted at the federal level and yet laws providing for discriminatory exemptions were still in force. The special integration programmes might, in her view, lead to marginalization rather than integration, and on the subject of civil rights she was concerned about the possibility that children could lose their nationality as a result of an error committed by their parents. In her opinion, that provision was contrary to articles 2, 7 and 8 of the Convention.

39. With regard to the question of the family environment and alternative care, she noted with concern that women working in the private sector had no entitlement to maternity leave. That could deprive children of prenatal care and of the mother's presence, which was essential. With reference to homeless children, whose numbers appeared to be rising, she would like to know whether studies had been carried out to shed light on the causes of that phenomenon and to evaluate the effects of government programmes implemented to combat it. She emphasized the consequences of the problem in terms of economic exploitation, prostitution, pornography and even drug addiction. She had heard that the Australian Government had in 1996 been preparing to ratify the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, and she asked for further information on the status of the ratification process. Lastly, she would like to know whether there was an institution in charge of following up on the cases of children placed in foster families.

40. Mrs. KARP deplored the apparent differences in interpretation on the question of corporal punishment. In her view, the arguments put forward by the Australian delegation stemmed from a narrow interpretation of the Convention. The Committee had consistently considered that the Convention should be interpreted holistically, taking into consideration not only its specific provisions, but also the general principles which inspired it. The Australian delegation's interpretation implied that there was a double standard of human dignity, depending on whether adults or children were involved. She urged the Australian Government to reconsider its position on that important question.

41. With regard to the age of criminal responsibility, she would like to know whether any special measures for children were taken before trial, i.e. during the crucial police investigation stage, where it would be very difficult for children at 10 years of age to defend themselves. She would also like to know whether the campaign against racism mentioned by the Australian delegation and the school programmes for civic education made reference to the Convention. Finally, she rejected the argument that the Convention's provisions to ensure respect for children in the family environment undermined the authority of parents and teachers by encouraging children to rebel. In her opinion, that position reflected a profound misunderstanding of the Convention. She asked for clarification regarding what was being done to educate parents on that issue. She also inquired about

the exact terms of reference of the legal advisers appointed to represent children. Did they act in the best interests of the child and did they take into account the child's views?

42. The CHAIRPERSON asked whether the issues addressed by the Australian delegation in its preliminary comments, especially concerning unemployment, poverty and health care, related only to the State of New South Wales or applied to the entire country. As she understood it, the social security system covered only children whose parents worked. What coverage was there for children whose parents were not employed? She invited the Australian delegation to reply to all those questions at the next meeting of the Committee.

The meeting rose at 1 p.m.